

**REMARKS**

1) The Examiner stated that in view of Applicants' submission of a CFR and Sequence Listing, amendments to the Specification the objections to the Specification have been withdrawn.

2) The Examiner stated that in view of Applicants' amendments to the Specification the rejections under 35 USC § 112, second paragraph, as being indefinite have been withdrawn.

3) The Examiner stated that in view of Applicants' amendments to the claims the rejection of claims 19 and 26 under 35 USC § 102(b) as being anticipated by Hugli (USPN 6,235,494 B1) has been withdrawn.

4) The Examiner stated that in view of Applicants' amendments to the claims the rejection of claims 19, 20, 22, and 26 under 35 U.S.C. § 102(b) as being anticipated by Ludin et al. (USPN 6,495,336 B1) has been withdrawn.

5) The Examiner stated that in view of Applicants' amendments to the claims the rejection of claims 19, 20, 22, 26, 28, 29, and 30 under 35 U.S.C. § 102(b) as being anticipated by Nagy et al. (2000) has been withdrawn.

6) The Examiner stated that in view of Applicants' amendments to the claims the rejection of claims 19, 20, 21, 22, 26, 28, and 30 under 35 U.S.C. § 103(a) as being unpatentable over Nagy (2000) in view of Forrest et al. (USPN 4,978,610) has been withdrawn.

7) The Examiner stated that in view of Applicants' amendments to the claims the rejection of claims 19, 20, 22, 23, 26, 28, and 30 under 35 U.S.C. § 103(a) as being unpatentable over Nagy (2000) in view of Nicholson (USPN 4,456,337) has been withdrawn.

New or Remaining Rejections under 35 USC 103(a)

- 8) The Examiner has stated that claims 19, 24, 25, 26, 27, and 31 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Hugli (USPN 6,235,494 B1) in view of Braven et al. (US 2005/0221315 A1) for reasons of record set forth in the Prior Action. The Examiner noted that the applied reference (Braven et al.) has common inventors with the instant application.
- 9) The Examiner has stated that claims 19, 20, 22, 23, 24, 26, and 27 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Ludin et al. (USPN 6,495,336 B1) in view of Braven et al.
- 10) The Examiner has newly rejected claims 19, 20, 22, 25, 26, 28, 29, and 30 under 35 U.S.C. § 103(a) as being unpatentable over Nagy (2000) in view of Braven et al.
- 11) The Examiner has newly rejected claims 19, 20, 21, 22, 25, 26, 28, 29, and 30 under 35 U.S.C. § 103(a) as being unpatentable over Nagy (2000) in view of Braven et al. and further in view of Forrest et al. (USPN 4,978,610).
- 12) The Examiner has newly rejected claims 19, 20, 22, 23, 25, 26, 28, 29, and 30 under 35 U.S.C. § 103(a) as being unpatentable over Nagy (2000) in view of Braven et al. and further in view of Nicholson (USPN 4,456,337).
- 13) The Examiner has noted that the rejections of claims 19, 25, 26, 27, and 31 under 35 U.S.C. § 103(a) in view of Braven et al. might be overcome by 1) a showing under 37 C.F.R. § 1.132 that the invention disclosed but not claimed in the prior art reference was derived from the inventor of the instant application and is thus not an invention “by another” under 35 U.S.C. § 102(e); 2) a showing under 37 C.F.R. § 1.131 of a date of invention for the claimed

subject matter prior to the effective filing date of the reference ; or 3) an oath or declaration under 37 C.F.R. § 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the instant application is the prior inventor under 35 U.S.C. § 104, together with a terminal disclaimer.

The Examiner also noted that this rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. § 103(c) as prior art in a rejection under 35 U.S.C. § 103(a).

14) The Examiner stated that Applicants' arguments regarding the teachings of Braven et al. were not found persuasive. In particular the Examiner stated that the Braven et al. reference had an effective U.S. filing date of 11 February 2003 "not November 02, 2003 as argued in the response" a date prior to the filing date of the instant application.

Applicants respectfully submit that they have reviewed the prior Response filed on the 30th June 2008 and do not understand where the Examiner has found the recitation of the date "November 02, 2003" in their response and therefore respectfully believe that the Examiner may be referring to another unrelated case.

15) Applicants herewith submit a declaration under 37 C.F.R. § 1.132 made by Helen Braven, Ph.D., one of the inventors, showing that, with Dr. Russell Keay, she is an inventor of the instant patent application and that they are also inventors of the published patent application, US 2005/0221315 A1, therein referred to as "Braven et al.". Dr. Braven also declares that the invention disclosure of Braven et al. was by them and not by another.

Applicants respectfully submit that the invention described in the Braven et al. prior art was made by the inventors of the subject matter sought to be patented in the instant application

and not by “another” and therefore Braven et al. is disqualified as prior art under 35 U.S.C. § 102(e). In addition, since the subject matter developed in the Braven et al. reference was made by the inventors of the instant application and not by “another”, Braven et al. would also be disqualified under 35 U.S.C. § 103(c) as prior art in a rejection under 35 U.S.C. § 103(a).

Therefore, Applicants submit that Braven et al. is disqualified as prior art under 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a).

16) With the disqualification of the Braven et al. reference as prior art, Applicants submit that claim 19, and dependent claims 25, 26, 27, and 31, are therefore not unpatentable over Hugli (USPN 6,235,494 B1) in view of Braven et al.

Applicants respectfully request that the rejection of claims 19, 25, 26, 27, and 31 under 35 U.S.C. § 103(a) be withdrawn.

17) With the disqualification of the Braven et al. reference as prior art, Applicants submit that claim 19, and dependent claims 20, 22, 24, 26, and 27, are therefore not unpatentable over Ludin et al. (USPN 6,495,336 B1) in view of Braven et al.

Applicants respectfully request that the rejection of claims 19, 20, 22, 24, 26, and 27 under 35 U.S.C. § 103(a) be withdrawn.

18) With the disqualification of the Braven et al. reference as prior art, Applicants submit that claim 19, and dependent claims 20, 22, 25, 26, 28, 29, and 30, are therefore not unpatentable over Nagy (2000) in view of Braven et al.

Applicants respectfully request that the rejection of claims 19, 20, 22, 25, 26, 28, 29, and 30

under 35 U.S.C. § 103(a) be withdrawn.

19) With the disqualification of the Braven et al. reference as prior art, Applicants submit that claim 19, and dependent claims 20, 21, 22, 25, 26, 28, 29, and 30, are therefore not unpatentable over Nagy in view of Braven et al. and further in view of Forrest et al. (USPN 4,978,610).

Applicants respectfully request that the rejection of claims 19, 20, 21, 22, 25, 26, 28, 29, and 30 under 35 U.S.C. § 103(a) be withdrawn.

20) With the disqualification of the Braven et al. reference as prior art, Applicants submit that claim 19, and dependent claims 20, 22, 23, 25, 26, 28, 29, and 30, are therefore not unpatentable over Nagy in view of Braven et al. and further in view of Nicholson (USPN 4,456,337).

Applicants respectfully request that the rejection of claims 19, 20, 22, 23, 25, 26, 28, 29, and 30 under 35 U.S.C. § 103(a) be withdrawn.


**CONCLUSION**

With these amendments and arguments, Applicants believe that the application is in condition for allowance. If the US Patent Office believes that communication would further the prosecution of this application, then the appropriate US Patent Office personnel are invited to contact the Applicants' below-signed representative at their earliest convenience.

Please charge Deposit Account No. **50-3194** in the amount of **\$130.00** as set forth in the enclosed transmittal letter. However, if the USPTO determines that an additional fee is due, the Commissioner is hereby authorized to charge Bell & Associates' Deposit Account No. **50-3194**.

Respectfully submitted,

Date: 30<sup>th</sup> January 2009

  
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